

STATE OF MICHIGAN
DEPARTMENT OF ENERGY, LABOR AND ECONOMIC GROWTH
OFFICE OF FINANCIAL AND INSURANCE REGULATION
Before the Commissioner of Financial and Insurance Regulation

Office of Financial and Insurance Regulation
Petitioner

v

Curtis Winnie
Respondent

Enforcement Case No. 07-662-MB
Docket No. 2007-640

For the Petitioner:

Diane Bissell
Office of Financial and Insurance Regulation
P.O. Box 30220
Lansing, MI 48909-7720

For the Respondent:

Barry Brickner, Attorney at Law
32270 Telegraph Road, Suite 285
Bingham Farms, MI 48025

Issued and entered
this 27th day of April 2009
by Ken Ross
Commissioner

FINAL DECISION
and
ORDER OF PROHIBITION

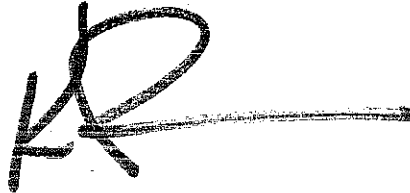
On April 25, 2007, Chief Deputy Commissioner Richard Lavolette issued an Order for Hearing and Order to Respond in this case. The Order for Hearing set forth detailed allegations that Curtis Winnie ("Respondent") had violated provisions of the Mortgage Brokers, Lenders, and Servicers Licensing Act (MCL 445.1651, *et seq.*) and the Consumer Mortgage Protection Act (MCL 445.1631, *et seq.*). Hearings began on October 7, 2007 and continued on December 4 and 17, 2007 and June 30, 2008. The parties filed post-hearing briefs. The administrative law judge issued his Proposal for Decision ("PFD") on December 30, 2008. Neither party filed exceptions.

The findings of fact and conclusions of law set forth in the PFD are adopted and made part of this Final Decision.

In addition to the considerations above, it is important that the Respondent did not file exceptions to the Proposal for Decision. Michigan courts have long recognized that the failure to file exceptions constitutes a waiver of any objections not raised. *Attorney General v. Public Service Comm* 136 Mich App 52 (1984).

ORDER

In accordance with section 18a of the Mortgage Brokers, Lenders, and Servicers Licensing Act (MCL 445.1668a) it is ordered that the Respondent is prohibited from being employed by, an agent of, or control person of a licensee or registrant under the Mortgage Brokers, Lenders, and Servicers Licensing Act or a licensee or registrant under a financial licensing act.

A handwritten signature in black ink, appearing to be 'KR' followed by a horizontal line.

Ken Ross
Commissioner

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

In the matter of _____	Docket No.	2007-640
Office of Financial and Insurance Regulation, Petitioner	Agency No.	07-662-MB
v Curtis Winnie, Respondent	Agency:	Office of Financial And Insurance Regulation
_____ /	Case Type:	Sanction Prohibition

Issued and entered
this 30th day of December, 2008
by James L. Karpen
Administrative Law Judge

PROPOSAL FOR DECISION

PROCEDURAL HISTORY

Appearances: Diane L. Bissell, Attorney at Law, appeared on behalf of Petitioner, Office of Financial and Insurance Regulation. Barry L. Brickner, Attorney at Law, appeared on behalf of Respondent, Curtis Winnie.

This case stems from an April 25, 2007 Complaint issued by the Petitioner which alleges that Respondent violated the Mortgage Brokers, Lenders, and Servicers Licensing Act (Act), 1987 PA 173, as amended, MCL 445.1651 *et seq* and the Consumer Mortgage Protection Act (CMPA), 2002 PA 692, as amended, MCL 445.1631 *et seq*. Count I of the Complaint asserts that in two mortgage transactions in February and March 2006 Respondent forged money orders to show that borrowers were making rental payments and gave the mortgage lenders the forged money order, contrary to Section 4(3) of the CMPA and Sections 22(a) and (b) of the Act.

Count II of the Complaint, which is less than clearly drawn, alleges that in March 2006 the borrower in a mortgage transaction was supposed to bring \$2,235.71 to closing. Count II further alleges that Respondent loaned the seller of the property \$4,598.26 and that the seller in turn loaned the money to the buyer to cover the closing costs. Count II avers that Respondent received repayment of the \$4,598.26 at closing through Capital One Management, Respondent's assumed name, and that none of this, plus the fact that the seller and purchaser were step brothers, was disclosed to the mortgage lender, contrary to Sections 22(a) and (b) of the Act.

Count III of the complaint alleges that Respondent applied for four mortgage loans through his employer Zenith Mortgage Group (ZMG), an assumed name of Dore' Hood McGowan who was licensed as a mortgage broker under the Act. Count III of the Complaint further asserts that in connection with all four loans Respondent misrepresented his income and his employment in order to induce a lender to fund the mortgages for the four properties he was purchasing. Count III asserts that this conduct violates the CMPA and the Act, although no statutory sections are cited.

Count IV of the Complaint was withdrawn by Petitioner in its September 30, 2008 post hearing brief, p4.

Count V of the Complaint asserts that Respondent owned 50% of a company known as Worldwide Estates. Count V alleges that in three specific mortgage transactions in 2003 and 2004, Worldwide Estates received funds at closing on the mortgages, but performed no mortgage related services in exchange for the funds. Count V of the Complaint asserts that the foregoing conduct violated the Act, but no specific statutory sections of the Act are cited.

Count VI, the last count in the Complaint, alleges that in connection with three properties Respondent purchased in 2003 and 2004 there were seller second mortgages involved. The Complaint appears to suggest that these second mortgages were fictitious and contrary to the Act, although, again no specific statutory sections are cited.

Without clearly saying so, Petitioner seeks an order of prohibition, barring Respondent from working in the mortgage business. The hearing in this case was initially set for July 17, 2007. After stipulation by the parties to two adjournments, the first hearing day was held on October 8, 2007 with subsequent hearing days on December 4, 17, 2007 and June 30, 2008. The record was closed upon receipt of Petitioner's reply brief on November 18, 2008.

ISSUES AND APPLICABLE LAW

The issues in this case are whether Respondent violated the CMPA or the Act as alleged in the Complaint. The statutory section of the CMPA which are cited in the cited in the Complaint is as follows:

445.1634.

Sec. 4.

(3) A person, appraiser, or real estate agent shall not make, directly or indirectly, any false, deceptive, or misleading statement or representation in connection with a mortgage loan including, but not limited to, the borrower's ability to qualify for a mortgage loan or the value of the dwelling that will secure repayment of the mortgage loan.

The statutory sections of the Act at issue in this case are as follows:

445.1668a.

Sec. 18a. (1) If in the opinion of the commissioner a person has engaged in fraud, the commissioner may serve upon that person a written notice of intention to prohibit that person from being employed by, an agent of, or control person of a licensee or registrant under this act or a licensee or registrant under a financial licensing act. For purposes of this section, "fraud" shall include actionable fraud, actual or constructive fraud, criminal fraud, extrinsic or intrinsic fraud, fraud in the execution, in the inducement, in fact, or in law, or any other form of fraud.

(2) A notice issued under subsection (1) shall contain a statement of the facts supporting the prohibition and,

except as provided under subsection (7), set a hearing to be held not more than 60 days after the date of the notice. If the person does not appear at the hearing, he or she is considered to have consented to the issuance of an order in accordance with the notice.

(3) if after a hearing held under subsection (2) the commissioner finds that any of the grounds specified in the notice have been established, the commissioner may issue an order of suspension or prohibition from being a licensee or registrant or from being employed by, an agent of, or control person of any licensee or registrant under this act or a licensee or registrant under a financial licensing act.

445.1672.

Sec. 22. It is a violation of this act for a licensee or registrant to do any of the following:

(a) Fail to conduct the business in accordance with law, this act, or a rule promulgated or order issued under this act.

(b) Engage in fraud, deceit, or material misrepresentation in connection with any transaction governed by this act.

SUMMARY OF THE EVIDENCE

Petitioner introduced the following exhibits at the hearing:

- Exhibit 1 A Withdrawal Slip and Three Checks.
- Exhibit 2 A Settlement Statement.
- Exhibit 3 A Check Request, A Withdrawal Slip and A Check.
- Exhibit 4 A Note from Respondent.
- Exhibit 5 A Loan Payoff Analysis.
- Exhibit 6 Conditional Loan Approval.
- Exhibit 6A A Closing Authorization Letter.
- Exhibit 9 A Settlement Statement, Second Mortgage and Loan Application.
- Exhibit 13 A Loan Application.
- Exhibit 13A Respondent's 2003 Income Tax Returns.

- Exhibit 14 A Seller's Affidavit.
- Exhibit 15 An October 21, 2003 Agreement.
- Exhibit 16 A Second Mortgage and Settlement Statement.
- Exhibit 18 A loan Application.
- Exhibit 18A Respondent's 2004 Income Tax Returns.
- Exhibit 18B A Note and Mortgage.
- Exhibit 19 A Settlement Statement.
- Exhibit 19A Two Checks.
- Exhibit 24 A Loan Application.
- Exhibit 25 An Assumed Name Certificate.
- Exhibit 27 A Mortgage Broker Application.
- Exhibit 28 A Memorandum.
- Exhibit 30 A List of Employees.
- Exhibit 31 A Check Register.
- Exhibit 32 A Check Register.
- Exhibit 36 A Deposit Ticket and Check.
- Exhibit 38 A Resume.
- Exhibit 39 A Check.
- Exhibit 41 A Check.
- Exhibit 42 Eight Checks.

Respondent introduced the following exhibits at the hearing:

- Exhibit A An Advertising Flyer.
- Exhibit B An Advertising Flyer.
- Exhibit C A Buy-Sell Agreement.
- Exhibit G A Purchase Offer.
- Exhibit H An Account Status.
- Exhibit I An Account Status.

- Exhibit J A Mortgage.
- Exhibit K An Adjustable Rate Note.
- Exhibit L Electronic Mail Messages.
- Exhibit M Limited Liability Company Details.
- Exhibit N An Assumed Name Status.

Respondent Curtis Winnie was the first and last witness to testify. Mr. Winnie said that ZMG was owned by his grandmother who was helped by his father in obtaining a mortgage broker's license under the Act. Mr. Winnie began working at ZMG in 1999. Mr. Winnie received a flat fee for each mortgage loan he processed. Mr. Winnie testified that he left his ZMG employment for about a year in 2002-2003. He later testified that he only worked for Capital One Management, his assumed name, from September 2002 to September 2003. It is not clear from this record, due to Mr. Winnie's conflicting responses when he resumed work for ZMG. He testified that when he was away from ZMG he formed a company called Worldwide Estates with [REDACTED]. (It will be presumed, based on his testimony, that he was not employed at ZMG from September 2002 to September 2003). [REDACTED] was a builder. He and Winnie were intending to buy properties and fix them up for resale. Respondent said he had a disagreement with [REDACTED] and went back to work at ZMG. He said he returned to ZMG in December 2003 and worked until June 2007. Mr. Winnie said that during this time, ZMG was his only employment. When he returned to work at ZMG he was employed as a loan officer and later as an operations manager.

Mr. Winnie said he had heard of [REDACTED], but was not the loan officer who processed [REDACTED] mortgage loan application. Winnie also said he may have received a commission on the [REDACTED] loan.

Mr. Winnie testified he knows [REDACTED] as a client and a friend. [REDACTED] obtained a mortgage loan through ZMG in 2006. Winnie attended the closing on the [REDACTED] loan. [REDACTED] was purchasing the property, located at [REDACTED], from his step brother, [REDACTED]. [REDACTED] also attended the loan

closing. Exhibit 2A is the settlement statement on the [REDACTED] loan. It indicates that [REDACTED] was to bring \$2,235.71 to the closing. Mr. Winnie stated he loaned money to [REDACTED] who gave it to [REDACTED] to cover the cash he was obligated to bring to the closing. Then Winnie testified he loaned money directly to [REDACTED]. Mr. Winnie said it was alright for loan officers to loan money to borrowers. He further testified he could not remember if he loaned the money needed to close the loan to [REDACTED] to [REDACTED]. Mr. Winnie received his loan money back at closing by invoicing the lender for mortgage related services in the amount of \$4,598.26. Exhibit 3A. The invoice was in the name of Capital One Management, Mr. Winnie's assumed name. Mr. Winnie testified that Capital One did not in fact perform any mortgage related services in connection with the [REDACTED] loan. The invoice was only submitted so Winnie could get his money back. Exhibit 5 is the invoice from Capital One Management prepared by Respondent. Mr. Winnie testified he loaned either [REDACTED] or [REDACTED] \$4,600, but the invoice states \$6,000 is owed for the "services." Winnie said the higher amount represented interest, but the invoice contains a 6% interest rate on amounts owed. Exhibit 5.

Respondent testified he purchased a house located at [REDACTED], [REDACTED]. He also purchased a house located at [REDACTED]. Winnie purchased both houses from [REDACTED]s. Both properties, Winnie testified, needed repairs which were done before and after closing. Respondent purchased property located at [REDACTED] on April 20, 2004. Respondent also purchased a property located at [REDACTED].

Respondent admitted he was at one time the sole owner of Worldwide Estates. The bank account opening documents for Worldwide Estates listed Respondent's residence as the firm's address. However, an assumed name certificated dated August 13, 2003 lists both [REDACTED] and Respondent as the firm's owners.

Respondent testified that on both the [REDACTED] and [REDACTED] properties money was paid to Worldwide Estates for property repairs. There were seller second mortgages

on the [REDACTED] and [REDACTED] properties with [REDACTED] the seller, holding the second mortgages. Respondent testified that the mortgages were paid off by work that he did on properties owned by [REDACTED].

There was also a seller's second mortgage on the [REDACTED] property, but as shown in Exhibit 18B, the address where payment was to be made on the second mortgage was [REDACTED] the business address of ZMG.

Respondent testified he purchased the [REDACTED] property as an investment property. Respondent lists his income as \$4,000 per month in the [REDACTED] loan application and \$6,043 per month in the [REDACTED] loan application. The [REDACTED] loan application indicates Respondent was purchasing it as his primary residence. Closing on the [REDACTED] property occurred on October 15, 2003 and on the [REDACTED] property on October 21, 2003. Mr. Winnie's 2003 tax returns show his gross annual income to be \$16,580. Exhibit 13A.

Exhibit 18, Respondent's loan application for the [REDACTED] property, which closed on April 19, 2004, shows his income to be \$4,500 per month. Respondent's 2004 tax returns, Exhibit 18A, show his annual income to be \$18,387.

Winnie testified that he purchased the [REDACTED] and [REDACTED] properties as investments. He purchased the [REDACTED] property as his primary residence but moved out after a month due to the rough condition of the neighborhood. Winnie later purchased the [REDACTED] property as his primary residence.

The second witness to testify was Elliott Purty, an examination manager employed by Petitioner. Mr. Purty, who has worked for Petitioner for 20 years, conducted the examination of ZMG. During the course of his examination he spoke with Respondent several times. Mr. Purty recommended that an order of prohibition be entered against Respondent. Respondent admitted to Mr. Purty that he loaned funds to borrowers to enable them to close on mortgage loan transactions.

Mr. Purty testified about the [REDACTED] and [REDACTED] transactions referred to in Count I of the Complaint. As noted previously, fabricated Western Union money orders were sent to the lenders in each case to establish that the borrowers had been paying rent to their landlords. Exhibit 29. Mr. Purty said Respondent told him he had nothing to do with the fabricated money orders. Purty testified that Respondent received a commission on both loans. When asked on cross examination if he knew if Respondent fabricated the money orders, Purty said he did not know if Respondent had anything to do with the money orders. Mr. Purty's basis for charging Respondent with having fabricated the money orders was that Respondent received a commission on the transactions (Exhibit 31) that he loaned money to [REDACTED] so the transaction could be completed and that Respondent was an operation manager at ZMG. There does not appear to be any evidence that Respondent supervised the loan officers in the [REDACTED] and [REDACTED] transactions since there was another operations manager at ZMG along with Respondent at that time.

Mr. Purty testified there was nothing in the [REDACTED] mortgage loan file which advised the lender that Mr. Winnie was Capital One Management. Mr. Purty testified that Winnie received a \$1,000 payment from ZMG in connection with the [REDACTED] loan.

Mr. Purty stated that on the [REDACTED], [REDACTED] and [REDACTED] properties loan files, Respondent listed his employer as Capital One Management. Mr. Purty stated that in all four loans, based upon Respondent's tax returns, he misrepresented his income and his employment since in 2003 and 2004 he was supposedly working at ZMG.

Mr. Purty stated that during the examination of ZMG, Respondent told him that Worldwide Estates was owned by [REDACTED] and that he (Respondent) had nothing to do with the company. Respondent later admitted he was an owner of Worldwide Estates. Mr. Purty testified that Worldwide Estates received funds for services at the closing on the [REDACTED], [REDACTED] and [REDACTED] mortgage loans. Mr. Purty said that all three of these

closings involved seller second mortgages. Mr. Purty expressed the view that no work was done on any of these three properties by Worldwide Estates. Purty later said he had never visited these properties and does not know if repairs were performed on any of the properties. He noted that Respondent never provided documentation for any work Worldwide Estates performed. He also testified that he did not know if [REDACTED] or Respondent did any work on the three properties subsequent to closing to satisfy the seller's second mortgages on the properties.

Mr. Purty noted that none of the seller's second mortgages were recorded. He felt that this was an indication that they were fictitious and were used only to reduce the cash the borrower needed to bring to closing on the mortgage loans. There was no evidence in the mortgage loan files on the three properties that the seller second mortgages were paid off.

[REDACTED], a real estate agent who sold the [REDACTED] and [REDACTED] properties to Respondent, testified next. He said [REDACTED] was the seller of both properties.

The next witness to testify was [REDACTED] who was formerly employed at [REDACTED] as a regional director responsible for wholesale mortgage operations. He is familiar with mortgage loan underwriting and had reviewed several loans made by [REDACTED] to Respondent. He reviewed the loan documents for the [REDACTED] and [REDACTED] properties. He said employment information on the loan applications were very material. If Winnie's employment at AMG, the mortgage broker on the transactions, had been disclosed, the lender would have required extra due diligence and an independent appraisal from a national appraiser would have been required. [REDACTED] testified that it is material to the lender that the funds the borrower is bringing to closing actually come from the borrower's savings. [REDACTED] did not allow seller second mortgages on non-arms length transactions. It would also be material that if disbursements were made for services, that the services were actually performed. It would

also have been material, according to [REDACTED], that a repair company who was receiving payment for services was owned by the borrower.

Before turning to the factual findings a few matters warrant comment. First, Curtis Winnie was not a credible witness. His answers were evasive and contradictory. Second, there is a difference between suspicion and proof. Undoubtedly, the money orders were fabricated as alleged in Count I of the Complaint. There is no proof that Respondent was the person who fabricated the money orders. Mr. Purty conceded as much in his testimony. Third, it is uncontested that Respondent directly or indirectly loaned money to [REDACTED] so he would have sufficient cash to be able to close on his mortgage loan. It is also uncontested that Respondent recovered his loan money by submitting an invoice for services as Capital One Management. Neither the fact of the loan or that Respondent was Capital One Management was disclosed to the lender. Fourth, based on Mr. Winnie's tax returns, it is clear his monthly income was inaccurately disclosed on his loan applications for the [REDACTED] and [REDACTED] properties. Although it is also likely that he falsely disclosed his income on the loan applications for the [REDACTED] property, there is no evidence to prove it. Based on one version of Respondent's testimony, he returned to work at ZMG in 2003. He also said that while he was away from ZMG he worked with [REDACTED] at Worldwide Estates. In either event, it is clear that he falsely disclosed his employment as Capital One Management on all four loan applications. Fifth, while Worldwide Estates may or may not have performed repair work on one or more of three properties listed in Count V of the Complaint, it is uncontested that Respondent's ownership interest in Worldwide Estates was not disclosed to the lender. Such disclosure would obviously be material. Finally, it is apparent that the seller second mortgage on the [REDACTED] property where the monthly payments were to be made at ZMG's Troy, Michigan office was fictitious. It seems likely the seller seconds on the [REDACTED] and [REDACTED] properties were also fictitious. The only suggestion that they were not comes from Mr. Winnie's testimony that he may have performed repair services to pay off the seller

seconds. As previously noted, I do not find his testimony credible.

FINDINGS OF FACT

Based upon the entire record as discussed above, I make the following findings of fact:

1. Respondent, Curtis Winnie was employed by ZMG from 2003 to 2007, first as a loan officer and later as an operations manager.
2. ZMG was licensed as a mortgage broker under the Act until June 2007.
3. During all relevant times Curtis Winnie operated under the assumed name of Capital One Management.
4. During all relevant times Curtis Winnie operated a property rehabilitation business with [REDACTED] called Worldwide Estates.
5. In 2006 [REDACTED] closed on a mortgage loan brokered through ZMG for the purchase of property on [REDACTED], [REDACTED].
6. Also in 2006 [REDACTED] closed on a mortgage loan brokered through ZMG for the purchase of property on [REDACTED], [REDACTED].
7. The lenders of both the [REDACTED] and [REDACTED] loans requested proof that the two borrowers were paying rent on their existing residences.
8. Someone at ZMG fabricated Western Union money orders and sent them to the lenders of the two mortgage loans.
9. Respondent was paid a commission on both loans, but he was not the loan officer for the two loans.
10. Petitioner has failed to prove that Respondent fabricated the money orders or had knowledge of the fabricated money orders.
11. In March 2006 [REDACTED] closed on a mortgage loan brokered

through ZMG on property located at [REDACTED]

12. The seller of the [REDACTED] property was [REDACTED], Mr. [REDACTED] step-brother.
13. The HUD-1 Settlement Statement required [REDACTED] to bring \$2,235.71 to closing.
14. Respondent loaned \$4,598.26 to either [REDACTED] or [REDACTED] to cover the costs due at closing.
15. Respondent received back his loan money by invoicing the lender for mortgage related services. The invoice was in Respondent's assumed name, Capital One Management.
16. The invoice was in the amount of \$6,000.00 with a six percent rate of interest.
17. Respondent testified that the \$6,000.00 figure represented interest on the \$4,598.26 loan.
18. No services were performed by Capital One Management for mortgage related services.
19. The lender was not informed that [REDACTED] and [REDACTED] were step-brothers.
20. Respondent regularly loaned money to borrowers to cover cash they needed to bring to closing. Respondent would recover his loans by using Capital One Management invoices for mortgage related services.
21. Lenders were not informed that Capital One Management's mortgage related services involved loans to borrowers from Respondent.
22. On October 15, 2003 Respondent applied for a mortgage loan through ZMG on property located at [REDACTED]

- Michigan: On the loan application Respondent represented his income to be \$6,843.00 per month.
23. On October 21, 2003, Respondent applied for a mortgage loan through ZMG on property located at [REDACTED]. Respondent represented on the loan application that his monthly income was \$4,000.00.
 24. On April 19, 2004, Respondent applied for a mortgage loan through ZMG on property located at [REDACTED]. Respondent represented on the loan application that his monthly income was \$4,500.00.
 25. On March 25, 2005, Respondent applied for a mortgage loan through ZMG on property located at [REDACTED]. Respondent represented on the loan application that his monthly income was \$7,500.00.
 26. Respondent's 2003 federal income tax returns show his gross annual income to be \$16,580.00.
 27. Respondent's 2004 federal income tax returns show his gross annual income to be \$18,387.00.
 28. On all four loan applications Respondent listed his employer as Capital One Management, not ZMG.
 29. The [REDACTED] and [REDACTED] properties were purchased as Respondent's primary residence, the [REDACTED] and [REDACTED] properties were purchased as an investment.
 30. On the [REDACTED] [REDACTED] and [REDACTED] properties funds were disbursed to Worldwide Estates for repairs to the properties. Petitioner has failed to prove that repairs were not actually done.

31. It was not disclosed to the lender that Respondent had a half interest in Worldwide Estates.
32. The [REDACTED], [REDACTED] and [REDACTED] properties all involved seller second mortgages.
33. The seller second mortgage in the [REDACTED] transaction was for \$7,000.00. The mortgage note was undated and payment on the note was to be made at ZMG's Troy office.
34. The seller second on the [REDACTED] property was fictitious.
35. Petitioner has failed to prove that the seller second mortgages on the [REDACTED] and [REDACTED] properties were fictitious.

CONCLUSIONS OF LAW

As reflected in the factual findings, Petitioner has failed to prove that Respondent fabricated the Western Union Money orders as alleged in Count I of the Complaint. The mere fact of receiving a commission does not prove Respondent is the one who fabricated the money orders. Respondent testified that ZMG employees who referred mortgage loans were entitled to a commission, as were the loan officers, operations manager and presumably the owners of ZMG. These other individuals may have been responsible for the money orders.

Count II of the Complaint alleged that Respondent loaned funds to one or the other step-brother involved as seller and buyer and then recovered his loan money by submitting a Capital One Management invoice for \$6,000.00. It is uncontested that the fact of the loan, the identity of Capital One Management and the fact the transaction was between related parties was never disclosed to the lender. Count II asserts that this conduct violated Section 22(a) and (b) of the Act.

Section 1a(l) of the Act defines a mortgage broker as someone who serves as an agent for a person attempting to secure a mortgage loan. Clearly, this is what a mortgage loan officer like Respondent does on behalf of his clients (the borrowers).

Section 2 of the Act requires that mortgage brokers be licensed or registered unless the person is an employee of a single mortgage broker, such as the relationship between Respondent and ZMG. Section 22 of the Act states: "It is a violation of this act for a licensee or registrant to do any of the following." (Emphasis supplied). It is somewhat surprising that the agency charged with administering the Act could make such an obvious mistake as to assume Section 22 of the Act was applicable to Respondent.

Count III of the Complaint alleges that Respondent applied for four loans and on each of the loan applications misrepresented his employment and his income. Count III goes on to allege that this conduct violated unspecified section of the Act and CMPA.

Leaving aside other provisions of the Act which will be discussed, *infra*, Respondent's misrepresentation of his income and employment on the [REDACTED] and [REDACTED] loan applications and misrepresentation of his employment on the [REDACTED] loan application do not violate Section 22 of the Act for the same reasons discussed above with reference to Count II of the Complaint.

The CMPA was enacted in 2002 and was intended to prohibit abusive lending practices. It applies to mortgages on primary residences. The CMPA defines a "person" to include an individual or a legal entity such as a corporation. Section 4(3) of the CMPA prohibits a person from making a false, deceptive or misleading statement in connection with a mortgage loan. In the present case both the [REDACTED] and [REDACTED] properties were intended to be Respondent's primary residence. In both cases Respondent failed to disclose that ZMG was his employer and in the [REDACTED] loan application he misrepresented his income. Respondent may have also misrepresented his income on the [REDACTED] loan application, but there is insufficient proof that he did so. Thus, Petitioner has proven that Respondent violated Section 4(3) of the CMPA as discussed above.

As noted, *supra*, Count IV of the Complaint was withdrawn by Petitioner.

Count V of the Complaint asserts that Respondent violated some unspecified sections of the Act by receiving funds at closing through Worldwide Estates for repairs to

the [REDACTED], [REDACTED] and [REDACTED] properties that were never done. Respondent testified that Worldwide Estates made the repairs. Petitioner said the repairs were not made. Petitioner has the burden of proof until a *prima facie* case is made. Respondent has no evidentiary burden to meet. Thus, Petitioner has failed to prove the allegations in Count V of the Complaint and if it had done so, Section 22 of the Act would not apply for the reasons previously given. It should be noted, however, that Respondent's half interest in Worldwide Estates was not disclosed to the lenders of these mortgages loans.

Count VI, like its predecessors, asserts that the misconduct alleged violates some unspecified sections of the Act. The conduct alleged is that the [REDACTED], [REDACTED] and [REDACTED] transactions all involved fictitious seller second mortgages which were used to reduce the amount of cash Respondent needed to bring to closing on the loans. As indicated in the factual findings, the \$7,000 seller second on the [REDACTED] property where payments were to be made to ZMG's Troy office, was clearly fictitious and Respondent can fairly be held responsible for concocting it for his own benefit. The same cannot be said for the other two seller second mortgages.

As noted above, Respondent regularly loaned money to borrowers and recouped his loan by invoicing the lender for mortgage related services in the name of Capital One Management and in [REDACTED] loan the invoice was in excess of the amount loaned. The mortgage lenders were not provided this information. Respondent also lied about what his monthly income and employment on three loan applications and lied about his employment on a fourth loan application. Respondent failed to disclose his ownership interest in Worldwide Estates to lenders he billed for property repairs. Respondent also created a fictitious seller second mortgage on the [REDACTED] property to reduce the amount of cash he needed to bring to closing.

Black's Law Dictionary (7th ed), p. 991 defines material information as information that would be important to a reasonable investor in making an investment decision. All of the information mentioned above falls within this definition.

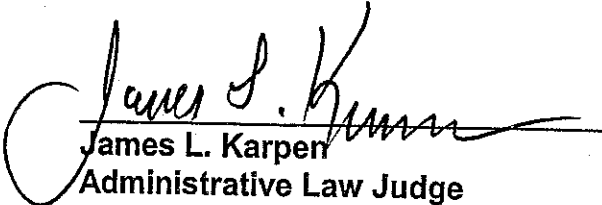
Section 18a(1) provides that if the Commissioner believes a person has engaged in fraud, he/she may issue an order of prohibition barring the person from employment as an agent or control person of a licensee or registrant under the Act or as a licensee or registrant under another financial licensing act. Fraud is defined in Section 18a(1) of the Act to include any form of fraud. Fraud is defined in Black's Law Dictionary, *supra*, p 670 as: "A knowing misrepresentation of the truth or concealment of a material fact to induce another to act to his or her detriment." In the present case, Respondent, an experienced employee in the mortgage industry, made numerous misrepresentations with the intention that mortgage lenders would act to their potential detriment. In sum, Respondent committed fraud.

PROPOSED DECISION

Due to the circumstances, as describe above, I recommend that the Commissioner issue an order of prohibition pursuant to his authority under Section 18a of the Act prohibiting Respondent from being employed by or as an agent of a licensee or registrant or a control person of a licensee or registrant under the Act or another financial licensing act.

EXCEPTIONS

If a party chooses to file Exceptions to this Proposal for Decision, the Exceptions must be filed within 30 days after service of this Decision. All Exceptions must be filed with the **Office of Financial and Regulatory Services**, Division of Securities, Ottawa State Office Building, 611 West Ottawa Street, 3rd Floor, P.O. Box 30220, Lansing, Michigan 48909, Attention: Dawn Kobus. Exceptions must be served on all parties.


James L. Karpen
Administrative Law Judge